

Editor's note: Secretary affirmed by letter dated May 12, 1975 -- See 19 IBLA 218A below; Appealed -- dismissed, Civ. No. 79-1295 (S.D.Fla. Jan. 21, 1980)

GEORGE C. MATTHEWS

IBLA 75-157

Decided March 24, 1975

Appeal from the July 22, 1974, decision of the Eastern States Land Office, Bureau of Land Management, rejecting application for survey of islands or other omitted lands, ES 13925, Florida.

Affirmed.

1. Surveys of Public Lands: Generally

Although the Secretary of the Interior may survey any public lands which have been erroneously omitted from a survey, a plat of survey, once accepted, is presumed to be correct and will not be disturbed except upon clear proof of fraud or gross error; in the absence of such proof an application for survey of omitted land is properly rejected.

APPEARANCES: George C. Matthews, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

George C. Matthews appeals from the July 22, 1974, decision of the Eastern States Land Office, Bureau of Land Management (BLM), which rejected his applications for survey of islands or other "omitted" lands located offshore of Sections 5, 6, 7, 8, 16, 17, 20, 29, 32, T. 48 S., R. 25 E., and other islands or lands located offshore of sections 5, 8, 16, 17, 20, 21, 28 and 29, T. 49 S., Tallahassee Meridian, Florida. Briefly, the BLM found that the error in the original surveys was relatively minor and, consequently, rejected appellant's application for survey of "omitted" lands.

[1] Appellant's application for survey of omitted lands is, in effect, an assertion that the original surveys are incorrect. We have stated before that

It has long been established by the Department that surveys of the United States, after acceptance, are

presumed to be correct, and will not be disturbed, except upon clear proof that they are fraudulent or grossly erroneous. George S. Whitaker, 32 L.D. 329 (1903); State of Louisiana, 60 I.D. 129 (1948); Ralph E. May, C. S. McGhee, A-29014 (January 30, 1962).

Nina R. B. Levinson, 1 IBLA 252, 256, 78 I.D. 30, 33-34 (1971). See also United States v. Lane, 260 U.S. 662 (1923); Ralph L. Bassett, A-27372 (May 20, 1957). In determining whether a survey is in gross error several factors must be considered. First, a meander line is not drawn for the purpose of establishing boundaries. The purpose of the meander line is to approximate a shoreline so that the upland in a given area may be determined. Hardin v. Jordan, 140 U.S. 371 (1891). The boundary of a parcel of land bordering a meandered body of water is the actual shoreline. Mitchell v. Smale, 140 U.S. 406, 413 (1891); United States v. Lane, *supra*. Other factors which may be considered are the size of the error, the remoteness and value of the land when surveyed, and the limitations of the equipment used for the survey. United States v. Lane, *supra*. In the Lane case, the Court held that the omission of an area of land on a lakeshore 4,000 feet in length and 1,200 feet in width totalling nearly 100 acres was neither gross error nor fraud.

Neither in his statement of reasons for appeal nor in his original applications does appellant state whether the alleged omission is due to gross error or fraud. However, the evidence available will not support a finding of either gross error or fraud.

Two official surveys of different parts of this area have been accepted. The first survey was made by T. S. Stearns and approved in 1874. At that time the meander line along Ts. 48 and 49 S., R. 25 E. was established. The second survey was made in 1875 by Horatio Jenkins, Jr. and approved in 1876. That survey included four (4) islands located offshore of sections 5, 8, 17 and 20, T. 48 S., R. 25 E. The very fact that the second survey included only four islands and no others strongly suggests that there were no other islands to be surveyed in that specific area at the time of the two surveys.

The other evidence consists principally of a compilation of several maps by the United States Coast and Geodetic Survey. The compilation is based on an aerial map taken by the then Army Air Corps on February 22, 1927, the two surveys previously mentioned, and 1970 United States Geological Survey quadrangle maps. When the meander line of the 1874 survey is compared with the shoreline of other maps the disparity is not great in most places. In sections 29 and 32,

T. 48 S. and all sections of T. 49 S., along the Gulf of Mexico, the greatest disparity is approximately ten chains or 660 feet. The disparity for the most part is much smaller. The entire area claimed by appellant to be omitted is indicated on the compilation map to be mangrove swamp. The 1874 survey plots also indicate that most of the coastal margin consists of mangrove swamps.

In his statement of reasons for appeal, appellant has very emphatically stated that he applied only for survey of omitted islands. He submitted a map with his application showing the location of those islands. If one carefully compares that map with the 1874 survey and with the compilation map, it can be seen that what appellant asserts are omitted islands are not islands at all but are, rather, narrow strips of land forming the shore and separated in some places from the mainland by inland waterways. It is possible that at times of high tide some of the strips of land may be surrounded by water but this would not establish they were islands omitted from the surveys. Furthermore, the existence of the inland waterways is noted in the 1874 survey, even if their depiction is not a paradigm of accuracy.

The other islands allegedly omitted from the 1874 and 1875 surveys are located offshore of sections 5, 8, 17 and 20, T. 48 S., R. 25 E., and between the four islands surveyed in 1875 and the mainland. The Eastern States Office, BLM, found that this area consisted of mangrove swamps, and since the area is tidal in character, is not property of the United States. Again, a comparison of appellant's maps with the 1874 survey shows that the surveyor was fully aware of the existence of inland waterways. And the compilation maps agree with the conclusion of the Eastern States Office that the area is tidal in character.

Finally, we might note that it is quite possible that the area of uplands or islands in this area has increased since the time of the 1874 and 1875 surveys. As Webster's New International Dictionary, 1495 (2d ed. 1949) states in defining mangrove:

Any tropical or maritime tree or shrub of the genus Rhizophora, esp. R. Mangle. There are numerous aerial prop roots which ultimately form an impenetrable mass, so that mangrove swamps become active land builders.

We conclude, based on the information before us, that the error in the original surveys, if any, is minor and that there is no evidence of fraud in the making of original surveys.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Joan B. Thompson
Administrative Judge

Frederick Fishman
Administrative Judge

May 12, 1975

Mr. George C. Matthews
738 - 105th Avenue W.
Naples, Florida 33940

Dear Mr. Matthews:

This is in response to your petition dated April 12, 1975, requesting that I, as Secretary of the Interior, exercise my supervisory authority to reverse the decision rendered by the Board of Land Appeals in the matter of George C. Matthews, 19 IBLA 213 (1975).

The Board of Land Appeals was established as an independent quasi-judicial body with jurisdiction to decide such administrative appeals in isolation from institutional influence. A Departmental regulation, 43 CFR 4.21(c), provides that the Board's decisions are final, and no further appeal will lie in this Department. The final decision of the Board of Land Appeals normally concludes the matter and exhausts the administrative remedy.

This Department reposes special trust in the ability and integrity of the Board of Land Appeals and in each of its members. While, as Chief Executive of the Department, the Secretary has plenary authority to personally undertake the review of any case, I will not deprive the Board of its function absent any showing of its inability to arrive at a reasoned and impartial decision.

I have carefully read your petition and reviewed the decision of the Board, and I do not find that reversal of the decision is warranted.

Sincerely yours,

/s/ Kent Krizzell
Acting Secretary of the Interior

19 IBLA 218A

